

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

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**R.C. and S.C., on behalf of R.C.,**

**Plaintiffs,**

**vs.**

**CARMEL CENTRAL SCHOOL DISTRICT**

**Defendant.**

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**Civil Action 07 CIV 9532 (GEL)**

**AFFIRMATION IN SUPPORT  
TO DEFENDANT'S MOTION TO  
DISMISS THE COMPLAINT**

**MARK C. RUSHFIELD**, hereby affirms under the penalty of perjury:

1. I am an attorney, of counsel, in the law firm of Shaw, Perelson, May & Lambert LLP (formerly Shaw & Perelson, LLP), the attorneys for the defendants in the above-captioned matter.

2. I make this Affirmation in support of the defendant's motion to dismiss the Complaint pursuant to Fed R. Civ. P 12 (b) (6) on the following grounds:

A. As concerns the plaintiffs' claims for attorney fees, etc. relating to the unappealed July 24, 2006 decision of the Impartial Hearing Officer in Case No. 16776, the plaintiffs' action is barred by operation of the applicable statute of limitations.

B. As concerns the plaintiffs' claims for attorney fees, etc for the interim relief proceedings before the Impartial Hearing Officer, appeal proceedings relating thereto before the SRO and the review of same by the United States District Court for the Southern District of New York, the plaintiffs action should be dismissed because: (1) the plaintiffs are barred by the doctrine of claim preclusion or *res judicata* from asserting their claim for attorney fees as that claim was unsuccessfully asserted in those prior proceedings, (2) the plaintiffs are barred by operation of Fed. R. Civ. P.

54(d)(2)(B) from seeking to recover the attorney fees they seek as they did not make a motion for such fees within 15 days of this Court's Judgment in that prior litigation dated June, 2007 and do not demonstrate excusable neglect; and (3) the plaintiffs were not ultimately a prevailing party under 20 U.S.C. § 1415 concerning these proceedings for which they claim an entitlement to prevailing party attorney fees.

3. Attached hereto are the following exhibits which it is submitted should be considered by the Court in addressing the defendant's motion to dismiss the Complaint:

Exhibit A. March 20, 2006 decision of the State Review Officer referred to at paragraph 13 of the Complaint.

Exhibit B. The Complaint in *R.C., etc. v. Carmel Central School District*, Civil Action No. 06 Civ. 5495 (CLB) (hereinafter "*R.C. I*") referred to at paragraph 14 of the Complaint.

Exhibit C. The Final Judgment rendered by the District Court in *R.C.I.*

8. I affirm that the foregoing statements are true. I am aware that if they are false, I am subject to punishment.

WHEREFORE, it is respectfully requested that this Court grant the defendant's motion to dismiss the Complaint in all respects and grant defendant such other and further relief as the Court may deem just and proper.

Dated: January 4, 2008

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MARK C. RUSHFIELD, ESQ. (MCR 0231)